

Tengasco Pipeline Corporation

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REGULATORY AUTH.
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OFFICE OF THE
EXECUTIVE SECRETARY

Via Facsimile 615-741-5015

July 17, 2000

Executive Secretary
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, TN 37243

Re: ***Docket No. 00-00537***

Dear Sir:

Enclosed for filing in the papers of the captioned cause are the original and thirteen copies of "Joint Response of the City of Kingsport and Tengasco Pipeline Corporation to United Cities Gas Company's "Petition to Intervene and Application for Public Hearing."

Also enclosed is an additional copy which I request that you stamp with the date of filing and return to me in the enclosed self-addressed, stamped envelope.

Very truly yours,

TENGASCO PIPELINE CORPORATION

Cary V. Sorensen
General Counsel

CVS:liz
Enclosures

**BEFORE THE TENNESSEE REGULATORY AUTHORITY
NASHVILLE, TENNESSEE**

IN RE: DOCKET NO. 00-00537 *Joint Application of the City Of Kingsport and
Tengasco Pipeline Corporation for Approval of City Resolution and City Ordinance*

JOINT RESPONSE OF THE CITY OF KINGSPORT AND TENGASCO PIPELINE
CORPORATION TO UNITED CITIES GAS COMPANY'S "PETITION TO
INTERVENE AND APPLICATION FOR PUBLIC HEARING"

COME NOW Tengasco Pipeline Corporation ("TPC") and the City of Kingsport, Tennessee ("City of Kingsport") responding to the "Petition to Intervene and Application for Public Hearing" filed by United Cities Gas Company ("United Cities") in this proceeding.

BACKGROUND

TPC and City of Kingsport have made joint application for approval by the Tennessee Regulatory Authority of a Resolution and an Ordinance of the City of Kingsport, pursuant to TCA Section 65-4-107. Following such approval under Tenn. Code Ann. Section 65-4-107, TPC moved pursuant to TCA Section 65-4-207 that the TRA grant to TPC a certificate to provide intrastate natural gas service in Kingsport, Sullivan County, Tennessee in accordance with the approved Resolution and the Ordinance and also TPC's existing certificate in adjacent counties.

On July 5, 2000 United Cities filed its "Petition to Intervene and Application for Public Hearing" which seeks various relief under Tenn. Code Ann. Sections 65-4-201 through 206 which statutes were not the basis of TPC and City of Kingsport's application in this proceeding.

The franchise held by United Cities in Kingsport is *nonexclusive*, as demonstrated by the express wording of the franchise, which is attached to United Cities' petition as an exhibit.

ARGUMENT AND AUTHORITIES

Because United Cities' Petition seeks impermissible relief under inapplicable statutes, is based on an erroneously overbroad reading of TPC's and City of Kingsport's Joint motion for Approval of Resolution and Ordinance, and United Cities' franchise in Kingsport is nonexclusive and will therefore not support any claim of "interference" by TPC's franchise in Kingsport, United Cities' Petition to Intervene and Application for Public Hearing must be denied.

1. United Cities' Petition Seeks Relief Under Expressly Inapplicable Statutes.

United Cities' Petition to Intervene is improper as submitted because it seeks relief that is expressly unjustified by statute. Under Tenn. Code Ann. Section 65-4-207, it is expressly

stated that where a City has determined by resolution or ordinance that a competing service is necessary, *the certificate provisions of Sections 201-206 do not apply*. TPC and The City of Kingsport have filed under Sections 65-4-207 and 65-4-107 for approval of both such a Resolution and an Ordinance. United Cities' Petition is an attempt to transform this proceeding from one approving a city franchise agreement under Section 65-4-107 into a full-blown certificate proceeding under Sections 65-4-201--206 which is directly contrary to Section 65-4-207. Consequently, United Cities' reliance on Sections 65-4-202, 203, and 204 is not only misplaced, it is expressly forbidden by statute. Because United Cities seeks no other relief than expressly inapplicable relief, the Petition must be denied.

Under Section 65-4-107 under which this proceeding was filed, the TRA is directed, regarding approval of a city franchise or resolution such as the franchise and resolution enacted by the City of Kingsport here, that

...such approval [is] to be given when after hearing, the Authority determines that such privilege or franchise is necessary and proper for the public convenience and properly conserves the public interest.... [Emphasis added.]

Because Sections 65-4-203, 204, and 205 are made expressly inapplicable to proceedings at TRA to approve franchise ordinances and resolutions such as those enacted here, the Petition by United Cities is not only improper in seeking relief under these sections but would transform proceedings under Section 65-4-107 for approving franchise agreement into full-blown certificate proceedings. The Legislature could have made the hearing required under Section 65-4-107 identical in form to a certificate proceeding but did not do so, and instead affirmatively stated that certificate procedures did *not* apply (Section 65-4-207) and directed the Authority (Section 65-4-107) to approve franchises and other privileges upon making the findings stated therein which are supported by TPC's and City of Kingsport's Joint Application and to which United Cities has not made any objection.

Not only would is the transformation of this proceeding into a certificate proceeding improper, it is totally unnecessary. TPC already has been granted a certificate in adjacent counties, and filed this proceeding with the City of Kingsport to provide service in the City of Kingsport, Sullivan County, in accordance with the City Ordinance, the City Resolution, and TPC's existing certificate. A review of TPC's and City of Kingsport's Joint Motion discloses that no approval is sought for service to Bluff City, City of Bristol, or any area in Sullivan County other than to serve the City of Kingsport. TPC hereby confirms that no approval is sought in this proceeding for service to Bluff City, City of Bristol, or any area in Sullivan County other than to serve the City of Kingsport.

United Cities has not stated any disagreement with approval of the Ordinance and Resolution under Section 65-4-107 as filed by TPC and the City of Kingsport. United Cities cannot by simple reference to inapplicable sections of the statute and factually incorrect arguments change this proceeding not only into a different one, but one expressly forbidden by Section 207. United Cities petition must be denied for seeking inapplicable relief.

2. United Cities itself has a *NONEXCLUSIVE* franchise in the City of Kingsport and Therefore has No Grounds Upon Which It May Complain of "Interference" by Grant of TPC's Franchise in Kingsport.

TPC and City of Kingsport would point out more specifically that United Cities' motion is factually insupportable on its face. In paragraph 6, United Cities states that TPC is "about to interfere" with the existing system of United Cities. In that TPC and City of Kingsport seek approval of the Resolution and Ordinance in Kingsport, and the franchise agreement given to United Cities by the City of Kingsport is *nonexclusive* on its face [see page 2, Section II of United Cities' franchise agreement attached to its motion to intervene], it is not logically possible to interfere with a right that is nonexclusive, or the word "nonexclusive" would have no meaning. Consequently any claim of interference by United Cities with its nonexclusive franchise is unfounded and does not justify any reliance on Section 65-4-202, even if that section applied.

CONCLUSION

United Cities has stated no objection to the actual relief sought by TPC and City of Kingsport in this matter under Section 65-4-107 for approval of City Resolution and Ordinance. Having a nonexclusive franchise in Kingsport, and thus no claim for interference in Kingsport, the Petition to Intervene and Application for Public Hearing, which United Cities has improperly filed under Tenn. Code Ann. Sections 65-4-201 through 206, must be denied as being both factually and legally inapplicable in this proceeding under Tenn. Code Ann. Section 65-4-107 to approve an Ordinance and Resolution enacted by the City of Kingsport.

BY ATTORNEY:



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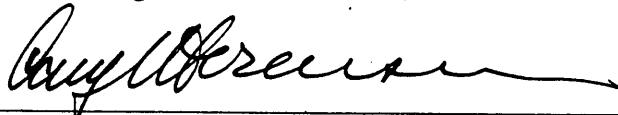
423-224-2417 (fax)

ATTORNEY FOR THE CITY OF KINGSPORT

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been mailed, postage prepaid, to the following party this 17th day of July, 2000:

Joe A. Conner
Misty Smith Kelley
Baker, Donelson, Bearman & Caldwell, P.C.
1800 Republic Centre
633 Chestnut Street
Chattanooga, TN 37450

A handwritten signature in black ink, appearing to read 'Cary V. Sorensen', written over a horizontal line.

Cary V. Sorensen
Attorney for Tengasco Pipeline Corporation